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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/607,532

06/27/2003

Keith W. Reiss

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EXAMINER

SODERQUIST, ARLEN

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/607,532	<b>Applicant(s)</b> REISS, KEITH W.	
	<b>Examiner</b> Arlen Soderquist	<b>Art Unit</b> 1797	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 10 March 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): The rejections of claims 1-15.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 1-15.  
Claim(s) objected to: 23.  
Claim(s) rejected: 16-22 and 24-30.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☒ Other: Attached form PTO-892 and literature references.

/Arlen Soderquist/  
Primary Examiner, Art Unit 1797

Continuation of 11. does NOT place the application in condition for allowance because: the reasons of record and the following comments. For the claims which still remain rejected, there is no requirement that the frequency markers be present in the spectra or that they are formed in the manner required by claims 1 or 23. Thus the arguments directed toward the method of forming the frequency markers are not commensurate in scope with these claims. Relative to claim 16, examiner also notes that the Stumpf reference uses an evacuated chamber to draw the sample through the trap. Valves control the connection of the sample to the trap and the evacuated chamber. Thus control of when the valves are closed will at least partially meet the reducing pressure step. Furthermore, one of ordinary skill in the art would have recognized the ability of a submillimeter spectrometer to measure an analyte of interest in the presence of other gases that would be present in concentrations higher than the analyte that is trapped. Thus one of skill in the art would have taken precautions to remove gasses other than the analyte that would interfere with the analysis. Relative to claim 20, the spectrometer(s) used at the first and second locations are not required to be different. Also the time relationship between sampling and recording the absorption spectrum at the first and second locations is not defined. Thus claim 20 includes sampling at different times in which the spectrometer is moved from the first location to the second location. This is exactly what is occurring in the Cocatre-Zilgien reference. A spectrometer is being move between different sampling locations that are defined by GPS coordinates. Thus the scope of claim 20 is met by the combination applied combination. Relative to claim 22, the van der Weide reference has two different embodiments that are both solid state. While the first uses pulsed oscillators, the second used a more conventional coherent source/detector arrangement (see section 4 of the SPIE paper, starting on page 282). This scanned system shows that solid state components can be used in a scanning type of system as is found in the Schafer reference. Thus the advantages of a solid state system would have been adequate motivation to modify the Schafer system.

The reference that have been cited are directed to the formation of frequency markers in a manner that appears to be similar to Schafer or to descriptions of the system used by Schafer or its predecessors.